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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

No. 3:15-cv-02113-SI

ADIDAS AMERICA, INC., a Delaware corporation; **ADIDAS AG**, a foreign entity; **ADIDAS INTERNATIONAL MARKETING B.V.**, a foreign entity; **REEBOK INTERNATIONAL LTD.**, a Massachusetts corporation; and **REEBOK INTERNATIONAL LIMITED**, a foreign entity,

Plaintiffs,

v.

TRB ACQUISITIONS LLC, a New York limited liability company,

Defendant.

**PLAINTIFFS' FIRST SET OF
INTERROGATORIES**

1- PLAINTIFFS' FIRST SET OF INTERROGATORIES

21184-0112/LEGAL129486149.1

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Pursuant to Federal Rule of Civil Procedure 33 and Local Rule 33, Plaintiffs adidas America, Inc., adidas AG, adidas International Marketing B.V., Reebok International Ltd., and Reebok International Limited request that Defendant TRB Acquisitions LLC answer the following interrogatories in writing and under oath within thirty (30) days after the service of this request.

I. DEFINITIONS

A. “adidas” means adidas AG and its subsidiaries and affiliates, including adidas America, Inc., adidas International Marketing B.V., and all of their respective officers, directors, employees, agents, representatives, attorneys, parent corporations, subsidiaries, affiliates, divisions, subgroups, successors, and assigns.

B. “Reebok” means Reebok International Ltd. and its subsidiaries and affiliates, including Reebok International Limited, and all of their respective officers, directors, employees, agents, representatives, attorneys, parent corporations, subsidiaries, affiliates, divisions, subgroups, successors, and assigns, excluding adidas.

C. “Plaintiffs” means adidas and Reebok.

D. “TRB” means TRB Acquisitions LLC and each of its corporate affiliates, divisions, subgroups, wholly owned or partially owned subsidiaries, parent corporations, owners, area or regional offices, predecessors-in-interest, successors, assignees, agents, intermediaries, legal representatives, trustees, consultants, and all representatives and other persons acting on its behalf, and the present and former officers, servants, and employees of each of the entities referenced in this paragraph.

E. “Document” includes “things” and shall have the broadest possible construction under Rule 34(a) of the Federal Rules of Civil Procedure and includes, without limiting the generality of the foregoing, the original and all copies, drafts, and translations of any document in any written, recorded, or graphic form, including memoranda and notes of oral conversations, as well as compilations, catalogs, and summaries of information or data, whether typed,

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handwritten, printed, recorded, or otherwise produced or reproduced, and any other retrievable data (whether e-mail, discs, tapes, cards, or data coded electrostatically, electromagnetically, optically, or otherwise). "Document" also means any nonidentical copy thereof. Designated documents are to be taken as including all attachments, exhibits, enclosures, appendices, and other documents that relate to or refer to such designated documents. The enumeration of various specific items as included within the definition of the word "documents" shall not be taken to limit the generality of this word, and the requests herein are directed and intended to obtain all "documents" in the broadest and most comprehensive sense and meaning of this word.

F. "Person" includes both the singular and plural, and means any individual, partnership, joint venture, corporation, proprietorship, firm, association, group, club, institute, governmental body, or any other organization or entity. "Person" includes any Third Party.

G. "Third Party" includes both the singular and plural, and means any Person except Plaintiffs and TRB.

H. "Date" means the exact day, month, and year if ascertainable, or if not, the best available approximation (including an approximation through relationship to other events).

I. "Identify" when used in reference to a Person who is an individual, means to state his or her first name, present or last known address and phone number, and present or last known position or business affiliation.

J. "Identify" when used in reference to a Person who is a partnership, joint venture, corporation, proprietorship, firm, association, group, club, institute, governmental body, or any other organization or entity, means to state its full name, the legal form of such entity or organization, its present or last known address and telephone number, and the identity of its chief executive officer, partners, or persons in equivalent positions.

K. "Disputed Three-Stripe Design" means the TRB design depicted in Paragraph 8 of the Complaint filed in this action ("Complaint"), as well as any other TRB design incorporating 2, 3, or 4 parallel or substantially parallel stripes running vertically down an item

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of apparel (*e.g.*, the sleeve of a top or the outseam of a pant) or in the midfoot portion of the upper of footwear.

L. “RBX Logo” means the logo depicted in Paragraph 7 of the Complaint.

M. “RBX Mark” means any word, mark, or designation incorporating the letters “RBX.”

N. “Disputed Marks” means the designs and logos described in Definitions K, L, and M above.

O. “Disputed Product” means any apparel or footwear bearing any of the Disputed Marks.

P. “Plaintiffs’ Marks” means the trademarks described and depicted in Paragraphs 20–54 of Complaint and Exhibits 1–21 to the Complaint.

Q. The terms “any” and “all” shall be mutually interchangeable and shall not be construed to limit any Interrogatory.

R. “And” shall mean “or” and “or” shall mean “and” to make the interrogatory inclusive rather than exclusive.

S. The past tense shall be construed to include the present tense, and vice versa, to make the interrogatory inclusive rather than exclusive.

T. The singular shall be construed to include the plural, and vice versa, to make the interrogatory inclusive rather than exclusive.

U. “Including” shall mean “including but not limited to” and “including without limitation.”

V. “Refer or relate” means concerning, regarding, referring to, relating to, discussing, noting, about, with respect to, mentioning, describing, evidencing, or constituting.

W. “Promote” includes advertise, endorse, sponsor, and similar activities.

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II. INSTRUCTIONS

1. TRB must answer each interrogatory separately and fully in writing under oath. Each interrogatory must be answered within the space provided following the interrogatory or on additional pages, if necessary, or in a separate document in substantially similar form.
2. TRB must serve the original answers to the interrogatories on Plaintiffs' counsel within thirty (30) days after service of the interrogatories.
3. Where an interrogatory relates to more than one person or subject, it must be answered as to each such person or subject separately.
4. Any objection to the interrogatories must be signed by the attorney making the objection. The objecting party must state the reasons for the objection with specificity and must answer any portion of the interrogatory to which there is no objection.
5. TRB must furnish all information available to it as of the date of its answers to these interrogatories. If TRB is unable to answer any of the interrogatories fully and completely, after exercising due diligence to secure the information necessary to make such full and complete answers, so state, and answer each such interrogatory to the fullest extent possible, specifying the extent of TRB's knowledge and TRB's inability to answer the remainder, setting forth whatever information or knowledge TRB may have concerning the unanswered portions and the efforts made to obtain the requested information.
6. These interrogatories call not only for the knowledge of TRB, but also for all knowledge that is available to TRB by reasonable inquiry and due diligence, including inquiry of TRB's representatives, agents, and attorneys.
7. Pursuant to Rule 26(e) of the Federal Rules of Civil Procedure, TRB is under a duty to supplement or correct its responses to these interrogatories in a timely manner if it learns that in any material respect a response is incomplete or incorrect. If TRB expects to obtain further information or expects the accuracy of a response to change between the time responses are served and the time of trial, TRB must state this expectation in each response.

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8. In the event that any objection is raised to these interrogatories on the basis of an assertion of privilege, state each fact on which the claimed privilege is based, and whether any responsive materials are being withheld on the basis of that objection.

III. INTERROGATORIES

INTERROGATORY NO. 1: Identify each Person involved in TRB's design, selection, and adoption of each Disputed Three-Stripe Design, describing each Person's involvement.

RESPONSE:

INTERROGATORY NO. 2: Identify each Person involved in TRB's design, selection, and adoption of the RBX Logo, describing each Person's involvement.

RESPONSE:

INTERROGATORY NO. 3: Identify each Person involved in TRB's design, selection, and adoption of each RBX Mark, describing each Person's involvement.

RESPONSE:

INTERROGATORY NO. 4: Describe the typical or target consumers (*i.e.*, end users) of each Disputed Product, including the demographic and psychographic profiles of such consumers.

RESPONSE:

INTERROGATORY NO. 5: Identify each Person who has been responsible for the creation, preparation, development, or placement of advertising or promotional materials for any Disputed Product, describing each Person's responsibility

RESPONSE:

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INTERROGATORY NO. 6: State by month (if available, or, if not, for each separate period reflected in TRB's books and records) TRB's expenditures for each advertising or promotional medium used to promote each Disputed Product.

RESPONSE:

INTERROGATORY NO. 7: Identify each Person who has been responsible for the distribution and sale of each Disputed Product, describing each Person's responsibility

RESPONSE:

INTERROGATORY NO. 8: Identify each store, website, or other outlet through which each Disputed Product has been sold or offered for sale.

RESPONSE:

INTERROGATORY NO. 9: State how and when TRB first learned of each of Plaintiff's Marks.

RESPONSE:

INTERROGATORY NO. 10: Identify each instance of which TRB has actual or hearsay knowledge, directly or indirectly, of any inquiry regarding or suggestion of any connection of any type between TRB and Plaintiffs or any Disputed Product and any of Plaintiffs' products. For illustrative purposes only and without limiting the foregoing, such instances would include misdirected inquiries, orders, cancellations, or returns, misassumptions as to source or origin, and comments, complaints, or expressions by any person indicating an assumption or belief as to association or connection between TRB or any of its products and Plaintiffs or any other apparel or footwear company.

RESPONSE:

7- PLAINTIFFS' FIRST SET OF INTERROGATORIES

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INTERROGATORY NO. 11: Identify each Third Party that has offered for sale or sold products incorporating a design that TRB contends is similar to adidas's Three-Stripe Mark (*see*, *e.g.*, Complaint ¶¶ 20–33, Exs. 1–13) or the Disputed Three-Stripe Design.

RESPONSE:

INTERROGATORY NO. 12: Identify each Third Party that has offered for sale or sold products incorporating a design that TRB contends is similar to adidas's Badge of Sport (*see*, *e.g.*, Complaint ¶¶ 34–35, Ex. 14), or the RBX Logo.

RESPONSE:

INTERROGATORY NO. 13: Identify each Third Party that has offered for sale or sold products incorporating a design that TRB contends is similar to Reebok's RBK Mark (*see, e.g.*, Complaint ¶¶ 48–55, Exs. 19–21), or the RBX Mark.

RESPONSE:

INTERROGATORY NO. 14: Identify each Person who has been responsible for wear testing or conducting any other quality control with regard any Disputed Product, describing each Person's responsibility.

RESPONSE:

INTERROGATORY NO. 15: Identify each Third Party that, within the past five (5) years, has communicated to TRB a claim, objection, demand, or other assertion regarding alleged trademark or trade dress infringement, whether or not such communication resulted in a lawsuit.

RESPONSE:

INTERROGATORY NO. 16: Identify each Person (including any Third Party) to whom TRB has licensed the RBX Logo, the RBX Mark, or any Disputed Three-Stripe Design.

RESPONSE:

INTERROGATORY NO. 17: Identify any royalty rate(s) TRB has paid or has offered to pay, whether formally or informally, to license or use the trademarks or trade dress of a Third Party.

RESPONSE:

INTERROGATORY NO. 18: Identify the royalty rate(s) any Third Party has paid or has offered to pay TRB, whether formally or informally, to license or use any trademarks or trade dress, including the RBX Logo and RBX Mark.

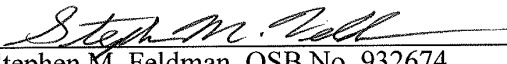
RESPONSE:

INTERROGATORY NO. 19: For each of the interrogatories, identify each Person, other than counsel, who was consulted or who otherwise provided information in connection with the response, and identify the interrogatory or interrogatories for which each such Person provided information.

RESPONSE:

DATED: January 15, 2016

PERKINS COIE LLP

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CERTIFICATION OF INTERROGATORY RESPONSES

I have reviewed the foregoing Plaintiffs' First Set of Interrogatories. I certify under penalty of perjury that, to the best of my knowledge, the factual information included in the foregoing responses is true and correct. I make this certification based upon personal knowledge of which I am competent to testify.

By: _____

Title: _____

Date: _____

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **PLAINTIFFS' FIRST SET OF INTERROGATORIES** on:

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Attorneys for Defendant

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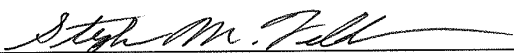
Attorneys for Defendant

by causing a full, true, and correct copy thereof, addressed to the last-known office address of the attorney or registered agent, to be sent by the following indicated method or methods (unless indicated otherwise above), on the date set forth below:

- ☐ By **mailing** in a sealed, first-class postage-prepaid envelope and deposited with the U. S. Postal Service at Portland, Oregon.
- ☒ By **email transmission** to davisk@lanepowell.com; mehrbanip@lanepowell.com; TRB-ADIDAS@arentfox.com.
- ☐ By **hand delivery**.

DATED: January 15, 2016

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